IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 205 of 2005
In
COMPANY PETITION No. 114 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE FINANCIAL CORPORATION - Applicant(s)
Versus
O.L.OF MAHALAXMI DIAMOND (INDIA) PVT. LTD. & 4 - Respondent(s)

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Appearance :
MR MITUL K SHELAT for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
MS AMEE YAJNIK for Respondent(s) : 1,
MR BHARAT JANI for Respondent(s) : 2,
MR AS VAKIL for Respondent(s) : 3,
NOTICE SERVED for Respondent(s) : 4,
MR KM PARIKH for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/03/2007

ORAL JUDGMENT

1. Present Judges Summons has been taken out by the

Gujarat State Financial Corporation for an appropriate order to permit the Corporation to stay outside the winding up proceedings for the purpose of enforcement of its charge as Secured Creditor under the provisions of the State Financial Corporation Act, 1951 subject to the provisions of Section 529(A) of the Companies Act.

2. It appears that the properties/assets of the company in liquidation are bifurcated into two parts i.e. i) Movable Properties and ii) Plant & Machineries. Shri Mitul Shelat, learned Advocate appearing on behalf of the GSFC has fairly submitted under the instruction of his client that so far as the GSFC is concerned, their charge over the movable property is not registered as required under the provisions of the Companies Act, 1956. However, it is the contention on behalf of the GSFC that certain plant & machineries, which are hypothecated with GSFC were belonging to some four proprietary concern and not belonging to the company in liquidation. The said claim was disputed by the State Bank of Indore. To find out some way out and with a view to see that

the condition of the plant & machineries is not further deteriorated, this Court directed the GSFC, State Bank of Indor and the Official Liquidator to take inspection of the plant & machineries and whether the same can be identified or not. The last inspection has been carried out on 12.03.2007 pursuant to the order passed by this Court dated 09.03.2007 and it has been submitted on behalf of the GSFC, State Bank of Indore and the Official Liquidator that the plant & machineries lying in the premises is in dismantled condition and it is difficult for both the Secured Creditors i.e. GSFC and the State Bank of Indore to identify the plant & machineries with specification wise. The learned Advocates appearing on behalf of the GSFC, State Bank of Indore and the Official Liquidator have produced the Minutes of the inspection carried out on 12.03.2007 in the form of consensus arrived at between the parties, by which, it has been agreed between the GSFC and the State Bank of Indore to share the realizable value on proportionate basis when sold. No other party or no other person has made any claim over the plant & machineries of the

company in liquidation till date.

3. Under circumstances, the plant & machineries now can be sold on the basis of the above consensus and the amount realized can be subsequently disbursed on the basis of the agreement between the GSFC and the State Bank of Indore and/or in accordance with law. The Minutes of inspection dated 12.03.2007, signed by the representatives of the Official Liquidator, GSFC and the State Bank of Indor, is directed to be taken on record.

4. Now, it appears that the Official Liquidator is in possession of other immovable properties also, over and above plant & machineries, which is required to be sold by auction after getting valuation of the properties in question. It appears that the Official Liquidator has not submitted his report. It also appears that even the Sale Committee is not constituted.

5. Under the circumstances, the Official Liquidator is directed to file an appropriate report for putting

the properties of the company in liquidation including plant & machineries to auction and sale the same and realize the amount by constituting the Sale Committee, appointing the Government approved Valuer and for all other purposes, within a period of two weeks from today, without fail.

6. It appears that the possession of immovable properties inclusive of plant & machineries are at present in possession of the GSFC and when admittedly the charge over the immovable properties of the GSFC has not been registered under the provisions of the Companies Act, 1956, the GSFC is directed to handover the possession of the properties, which is alleged to have been in their possession, to the Official Liquidator within a period of two weeks from today.

7. With this direction, this application is disposed of at this stage. No costs.

[M.R. SHAH, J.]

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